4.7 Effective date of the transaction

This is one of the key SDLT concepts. The effective date not only determines the due date by which the tax must be paid, but also triggers the purchaser's reporting obligations. In turn, the effective date will depend on the type of transaction involved.

In the straightforward case of a landlord buying a freehold or existing leasehold interest, there are normally two stages involved in the acquisition:

- The vendor and purchaser enter into a contract for the sale of the property.
- This contract is usually completed when the vendor transfers the property by way of a conveyance, being a deed or other written instrument.

The general rule is that the effective date is the date of completion, being the date by which the purchaser (in this case, the landlord) obtains legal title to the property. Although the contract gives the purchaser an equitable interest in the property, for SDLT purposes the contract alone does not constitute a land transaction.

Similarly, when the landlord lets out the property, there are normally two stages to the transaction:

- The landlord and tenant enter into a contractual agreement for a lease.
- This agreement is completed when the landlord grants the lease, thereby conferring the requisite property rights on the tenant.

This time, it is the tenant who is the "purchaser" under the SDLT legislation. Again, the general rule is that the effective date is the date of completion. Accordingly, the tenant's obligations to submit a land transaction return, and to pay the tax, run from the grant of the lease.

Where the parties enter into option arrangements, the effective date is the date that the option is granted or acquired. An option to buy or sell land or enter into a lease is a land transaction in itself, distinct from any land transaction arising if and when the option is exercised. The "purchaser" who pays for the option must submit a return and pay SDLT within 14 days of the option date. A separate obligation to submit a return and pay tax arises upon the exercise of the option (see **4.3.4** and **4.8**).

The effective date is brought forward if the contract is substantially performed before completion. The idea is to prevent the parties from enjoying the economic benefits of the transaction while delaying or even avoiding liability altogether by leaving the contract uncompleted. In these circumstances, time begins to run from the date of substantial performance. A contract is substantially performed in either of the following circumstances:

- The purchaser, or a person connected with the purchaser, takes possession of the whole or substantially the whole of the property. For these purposes, taking possession includes the purchaser receiving or becoming entitled to receive rents and profits, whether under the contract or under a separate lease or licence of a temporary character.
- Alternatively, a substantial amount of the consideration is paid or provided.

But what is a substantial amount of consideration? How much should be paid before the purchaser's SDLT obligations are triggered?

There is no explicit definition of what it means for a substantial amount of the consideration to be paid or provided. The legislation unhelpfully gives a circular definition, stating that when the consideration does not include rent, the condition is satisfied when:

> "… the whole or substantially the whole of the consideration is paid or provided …" (FA 2003, s. 44(7)(a)).

In practice, HMRC consider this condition to be satisfied when at least 90% of the purchase price is paid (see SDLTM 07950). Accordingly, this "definition" will apply to landlords acquiring the freehold or long leasehold, and also to tenants who are paying a premium only.

The legislation is more explicit on the position of a tenant who is paying rent. In these circumstances, the tenant is regarded as having paid a substantial amount of the consideration on either of the following two events:

- when the tenant pays the first instalment of rent; or
- when the tenant pays the whole or substantially the whole of any premium or other consideration.

Law: England and Northern Ireland: FA 2003, s. 44, 46, 119, Sch. 17A, para. 12A; **Scotland:** LBTT(S)A 2013, s. 8-10, 12, Sch. 19, para. 25; **Wales:** LTTADA 2017, s. 10, 14-15, Sch. 6, para. 20

Guidance: SDLTM 07950

4.8 Liability, payment and compliance matters

Liability to pay the tax falls on the purchaser. The purchaser has two obligations:

- to file a land transaction return with HMRC; and
- to pay the tax.

The duty to deliver a land transaction return arises if the transaction is notifiable under FA 2003, s. 77. In the context of a landlord buying property to let, most transactions will be notifiable, including the acquisition of a freehold or leasehold interest. There are exceptions which involve leases for a term of less than seven years, but these are unlikely to apply to a property investor, who will normally be seeking a longer term to generate a return on his capital. One important exception is where the purchase price for the property is less than £40,000 (see FA 2003, s. 77A for the full list).

The return must be delivered to HMRC and the tax paid within 14 days of the effective date of the transaction. The return must include a self-assessment of the tax due, and the information upon which the calculation is based. The return must also include a declaration by the purchaser that it is, to the best of his knowledge, correct and complete. Interest on unpaid tax runs from the end of the 14-day period following the effective date of the transaction (FA 2003, s. 87).

There are various statutory provisions which require a further return to be made, and additional tax paid, in the event that there is a change in circumstances. For example:

- A transaction is subsequently found to be part of a linked series (see **4.3.4** and Example below).
- The consideration for the transaction is subject to a contingency which subsequently materialises (see **4.9.2**).
- The transaction is subject to a relief that is subsequently withdrawn (see **4.10** for multiple dwellings relief and **4.11** for freeports relief).

Example – reporting obligations for linked transactions

In a previous example, we saw how Dougal acquired the freehold of commercial premises let to McHenrys the florist for a total price of

£800,000 (see Example 2 at **4.3.4**). The property was acquired in two stages:

- On 31 March, Dougal paid £150,000 for an option over the property, which is covered by the zero rate band for commercial properties.
- On 10 April, Dougal exercised the option, subsequently paying £650,000 on completion on 20 April.

The total amount of SDLT payable is £29,500, calculated on the basis that the option and subsequent sale of the property are linked transactions. The amount of SDLT attributable to each transaction is as follows:

	£
Allocated to option (£150,000/£800,000) x £29,500	5,531
Allocated to property (£650,000/£800,000) x £29,500	23,969
Total	29,500

Dougal has the following reporting obligations under FA 2003, s. 81A:

Grant of option

There is no need to file a land transaction return on the grant of the option. At this stage, the transaction is not notifiable – no tax is payable since the price of the option is covered by the zero rate band. Although tax of £5,531 is attributable to the option under the linked transaction rules, these rules do not yet apply. The reason is simple – there is only one transaction at this stage. The option is not yet part of a series of linked transactions, and must therefore be considered in isolation.

The option would have been notifiable had the price been greater than £150,000, taking the transaction above the zero rate band. In this case, Dougal would have initially been required to file the land transaction return and pay SDLT in the normal way, within 14 days of the option being granted (14 April). This amount would be subject to adjustment on the option subsequently becoming linked to the sale of the property.

Exercise of option

On exercising the option, a contract for the sale of the property comes into existence. The option is now linked to the property acquisition, with the following consequences:

- The option has become notifiable for the first time, as SDLT of £5,531 becomes due. The effective date is the date of completion of the property sale, being the transaction which triggers the notification obligation. In this case, Dougal must file a land transaction return and pay the tax within 14 days (4 May).
- The acquisition of the property is notifiable as a standard freehold acquisition. Dougal must file a second land transaction return and pay SDLT of £23,969 within 14 days of completion (4 May).

The time limit in respect of the option is extended to 30 days where the option was initially notifiable and tax has already been paid. In this case, Dougal would have been required to file a land transaction return and pay any additional SDLT in respect of the option by 20 May. The time limit for the sale of the property remains 14 days after completion.

The land transaction return is usually in a prescribed form SDLT1, together with supplementary information to be provided on forms SDLT2-SDLT4. Returns can be sent electronically or by paper. Once the return is filed and the tax paid, HMRC will issue a certificate SDLT5. This certificate is necessary for the purchaser to register title to the property with HM Land Registry.

Note that for Scotland and Wales the time limit for filing and payment is 30 days from the effective date of the transaction. The current 14-day limit in England replaced the previous 30-day limit from 1 March 2019.

Law: England and Northern Ireland: FA 2003, s. 76-77A, 79, 81A, 85, 117, Sch. 10, para. 1; FA 2019, s. 46; **Scotland:** LBTT(S)A 2013, s. 28-36, 40, 43; **Wales:** LTTADA 2017, s. 44-57, 65